

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **19.07.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : K N Interior Designs and Engineering Pvt
Ltd

MAIN PETITION NUMBER : CP(IB)/87(CHE)/2021
(IA/MA) APPLICATION NUMBERS

IA/387(CHE)/2023

ORDER

Present: Ld. Counsel Ms. Pavithra Dayalan for the Applicant /
Liquidator.
None for the Respondents.

Vide separate order pronounced in the open court, the application is disposed of with the directions to Respondents No. 1 to 4 to jointly make contribution to the account of the Corporate Debtor a sum of Rs. 1,74,00,000/- within a period of 30 days from the date of the order.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA (IBC)/387(CHE)/2023 inCP/IB/87/2021

(Filed under Section 66 of IBC,2016 read with Rule 11 of the NCLT Rules, 2016)

In the matter of KN Interior Designs and Engineering Private Limited

M.Murugesan

Liquidator of KN Interior Designs and Engineering Private Limited

New No.41, Old No. 17,

16th Avenue, Ashok Nagar,

Chennai – 600 083

... Applicant

-Vs-

1. **Kannan Narayanan**
E,23, 3rd Street,
Golden Jubilee Apartment,
Anna Main Road,
Kalaingar Karunanidhi Nagar,
Chennai – 600 078
2. **Narayanan Kannan**
E,23, 3rd Street,
Golden Jubilee Apartment,
Anna Main Road,
Kalaingar Karunanidhi Nagar,
Chennai – 600 078
3. **Smt. M.S.Subbulakshmi**
E,23, 3rd Street,
Golden Jubilee Apartment,
Anna Main Road,
Kalaingar Karunanidhi Nagar,
Chennai – 600 078
4. **Subramanian Mannahra**
No.11 F3, Ramakrishna Street,
Murthy Nagar, Ullagaram,
Kancheepuram,
Tamil Nadu – 600 091

... Respondents

Order Pronounced on 19th July 2024

CORAM

**SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

For Applicant : S.Sathiyarayanan, Advocate

For Respondents :M.Umashankar, Advocate for R1 to R3

ORDER

(Hearing Conducted through Hybrid mode)

This application has been filed by the Applicant / Liquidator under Section 66 of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 seeking the following reliefs;

- a. *To declare that the transaction amounting to Rs.1,88,95,000/- constitute Fraudulent Transaction under section 66 of IBC;*
- b. *To direct that the Fraudulent Transaction amounting to Rs.1,88,95,000/- be vested in the Corporate Debtor*
- c. *To direct all or any Respondents to make contribution of Rs.1,88,95,000/- to the assets of the Corporate Debtor; and*
- d. *To pass such other orders and further orders, as this Hon'ble Tribunal may deem fit and appropriate and thus render justice.*

BRIEF FACTS OF THE CASE:

2. On an Application filed by Corporate Applicant under Section 10 of IBC, 2016, this Tribunal vide order dated 03.12.2021 initiated

Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor viz. KN Interior Designs and Engineering Private Limited. Thereafter, this Tribunal vide order dated 19.09.2022 ordered for Liquidation of the Corporate Debtor and appointed the applicant herein as the Liquidator.

3. In compliance with Section 33 (1) (b) (ii) / Regulation 12 (1, 2, 3), paper advertisement in Form B of Schedule II of Liquidation Process Regulations was given by the Liquidator in The Times of India (English) and Malai Malar (Tamil) dated 24.09.2022. The paper publication was also uploaded in IBBI web website. The Corporate Debtor was not having any website. In response to the paper advertisement, he received 22 claims and the details are:

(Amount in ₹)						
S. No	Category of stakeholders	Summary of claims received		Summary of claims admitted		% Share in total amount of claims admitted
		No. of claims	Amount	No. of claims	Amount	

1	Secured financial creditors	1	3,25,27,576	1	3,25,27,576	59.05
2	Unsecured financial creditors	3	32,00,751	3	32,00,751	5.81
3	Operational creditors (Government Dues)	3	24,09,335	2	2,14,590	0.39
4	Operational creditors (other than Workmen, Employees and Government Dues)	15	2,00,71,859	15	1,91,43,082	34.75
	TOTAL	22	5,82,09,521	21	5,50,85,999	100.00

4. The Suspended Director also confirmed by letter that:

- a) No registered office exists at Ashok Nagar New No.41, Old No.17, 16th Avenue, Ashok Nagar, Chennai 600083; and it was closed during 2nd week of February 2021.
- b) The registered office was closed and the furniture, interiors, ACs and other accessories of the office were handed over to the land lord towards rental dues.
- c) All soft and hard copies of documents were missing/destroyed.
- d) There is no inventory and was written off.
- e) Operations stopped completely since 12.02.2021 and no business activity carried out since then. An Application under Section 10 of IBC was submitted to this Tribunal on 02-04-2021.

5. It is stated that the erstwhile IRP/ RP sent emails to the suspended directors and the statutory auditor, requesting them to submit the Books of Accounts and other records of the Corporate Debtor. As RP could not get the particulars, RP moved an Application under Section 19(2) of IBC vide IA/636/2022. This Tribunal passed an order on Section 19(2) Application on 19.09.2022, wherein the Respondents were directed to provide the copy of the documents / books of accounts of CD to the Liquidator within a period of 15 days from the date of the order.

6. It is stated that in spite of several attempts and emails sent to the suspended directors, the Applicant is unable to obtain any of the details or records of the Corporate Debtor.

7. It is stated that the Corporate Debtor had one current account at South Indian Bank Account No. 0654073000000254 for salary disbursement and had routed the following receivables through the current account instead crediting to Cash Credit account at BOI Adyar Branch where the Corporate Debtor availed facilities against the receivables.

Date of Credit	Amount	Amount Received from
16-02-2021	10,40,262.00	United India Insurance Company - Calicut - Retention Money
22-02-2021	7,55,866.00	LIC Payment on Account
25-02-2021	1,42,58,130.00	CEO Info Park
26-02-2021	34,835.00	LIC -Payment on Account
26-02-21	5,72,845.00	Bank of Baroda - Calicut - Final Bill
03-05-2021	14,27,794.00	Pt Lee Cn Polytechnic College Hostel
Total:	1,80,89,732.00	

8. It is stated that above funds received in the current account were paid to the Respondents and through them, it were paid to certain financier who financed the promoters to settle the Corporate Debtor's loan of Rs. 12 Lakhs of few certain persons in priority and in preference over and prejudicial to the interests of other creditors.

9. It is stated that in response to the email dated 14.06.2022, Mr. Kannan, suspended Director vide his email 20.06.2022 replied that no approval was obtained from BOI before diverting funds to settle the private financiers' loan amounts.

10. It is stated that this was deliberated in detail in 5th COC meeting dated 01.07.2022 and COC approved the engagement of services of CA

Sandeep Kothari, Chennai. His report dated 29.08.2022 was circulated to all the COC members and also suspended directors on 29.08.2022. The contents of the Report were discussed and deliberated in detail during the COC / SCC meetings held on 17.09.2022, 23.09.2022, 28.10.2022 and 16.12.2022.

11. It is stated that Mr. Kannan, suspended Director submitted one representation dated 13-10-2022 in the meeting held on 28.10.2022 and clarified / replied to the Transaction audit Report and the same is summarized as follows:

- a) Para 3.2 of Transaction audit report: The actual diversion of funds is Rs. 1,80,89,732 only.
- b) Para 3.3 of Transaction audit report the out flow from South Indian Bank account to:

S. No.	Beneficiary	Amount	Remarks
1	M S Subbulakshmi	1,42,50,000	M.D's Mother. She credited Rs. 20 lacs.
2	M. Subramanian	23,65,000	Ex General Manager

M. Murugesan


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3	Rajahraman Raghupathy	1,80,000	Personal Loan to staff (the details of the person not provided by the Directors)
4	Krishnan Sundararajan	1,00,000	Personal Loan to staff (the details of the person not provided by the Directors)
5	Salaries	5,87,500	
6	Project expenses	7,07,556	
	GROSS TOTAL	2,01,90,056	
	Recredit	-20,00,000	This amount though credited to Bank account was not utilised for CD
	TOTAL	1,81,90,056	

- c) Para 3.4 of Transaction audit report: He had claimed that for settlement of private financiers
- Rs. 50 lacs cash withdrawn.
 - Rs. 92.50 lacs by RTGS

- d) Para 3.5 of Transaction audit report: He claimed that
 - a. Rs. 31.50 lacs for settlement of private financiers of which the cash component is Rs. 20 lacs.
 - b. The rests are for salary and project expenses.
- e) Para 3.6 of Transaction audit report: He disputed the auditors remarks, and he claimed Rs. 2.47 crores for credit to Bank of India account of CD and for settlement of creditors.
- f) Para 4.1 of Transaction audit report: Agreed. Loan availed in the name of the company is Rs. 75.50 lacs.
- g) Para 4.2 of Transaction audit report, the suspended Director has admitted that Rs. 12 lacs for settlement of loan in the name of Corporate Debtor and he claimed that he had also paid by cash of Rs. 14.50 lacs.

12. It is stated that after hearing the submissions of Mr. Kannan, suspended MD and seeing the supporting papers submitted by him, the COC after deliberations had commented as follows:

- i. The documents are incomplete and not reliable. It has no evidentiary value.

- ii. Availing loans at exorbitant rates, routing CD's transactions reportedly through his mother, ex- employee, improper and incomplete documents, non- availability of full address of the private lenders amongst others are indications of doubtful nature of the transactions. Hence, it is a wrongful/fraudulent trading with the intent to deceive the creditors/stake holders
- iii. Part loan disbursements / settlements to the said private lenders, reportedly made by cash appears to be unrealistic. It is unlawful.
- iv. Diversion of funds, mainly to his mother and the ex- general Manager is not acceptable and it is a wilful default. The amount involved is Rs. 1,80,89,732/-
- v. Out of these amounts, Rs. 12 lacs paid for the CD's loan.
- vi. The claim of routing through the mother's account and of the ex- employee's account, is not in order and not acceptable
- vii. Huge cash transactions not supported by any documents and the explanation is not satisfactory and therefore not acceptable.

viii. No tally / books of accounts provided by the suspended directors so far.

ix. Statutory Auditor himself admitted that the audited balance sheet figures will undergo a change and promised to submit an amended balance sheet for 2021. Hence the reliability of figures is a question mark.

x. Directors' contribution / credits made in the CD's account is not supported by accounting entries vide para 3.6 of transactional audit report (page 10) i.e., loans from directors had reduced in the balance sheet as on 31.03.2021.

13. It is stated that the said transactions were clearly done with the intention of defrauding other creditors of the Corporate Debtor and in complete disregard to the interests of the Corporate Debtor and its other creditors. The parties devised a devious mechanism to unduly benefit by making illegal payments / siphoning of funds of the Corporate Debtor in favour of Respondents. Therefore, in the opinion of the Liquidator, the transactions listed in sl. No. 1 to 4 of the table

contained in Para 10(b) above amounting to Rs. 1,88,95,000/- are fraudulent transactions.

REPLY OF THE RESPONDENTS

14. It is stated that the Corporate Debtor's office was run in a rented place in the basement of the building at Ashok Nagar. Since the office was closed in February 2021 due to the medical conditions of both the Directors, the operational creditors and private financiers who financed the company, ransacked the place and removed documents and hardware of the computer coupled with account books damaged due to water seepage.

15. It is stated that the Applicant / Liquidator had visited and inspected the rented corporate office and is aware of the entire scenario. Further in the meetings held on 21.04.2022 and 26.04.2022, they had expressed their inability to produce the documents due to the above stated bonafide reasons. It is stated that all the mails sent by the Applicant were replied immediately. Even in those letter, the respondents had expressed the reasons for the non-production of the documents.

16. It is stated that the South Indian Bank bearing Account No. 0654073000000254 belonged to the Corporate Debtor for salary disbursement. Despite Covid pandemic increase and lock downs throughout the country, the Corporate Debtor had taken two projects in Kerala for the Kerala State Information Technology Infrastructure Limited (KSITIL) at Koratty for Rs.5,89,50,000/- and at Cyberpark, Calicut for Rs.1,26,50,000/- excluding GST total amounting to Rs.7,10,00,000/- respectively during financial year 2020-2021.

17. It is stated that the Corporate Debtor made the security deposits (100%) for PBG for KSITIL with Bank of India and Kerala State treasury deposits to the tune of Rs.57,80,849/- for the above two projects. From 2016 till the first week of February 2021, the commitments with the banks were kept intact and the bank records were very clean till Feb 9, 2021. In order to pay the retention money, deposits and for continuing the project, 1st Respondent obtained loan from Bank of India by pledging the house in Perumbakkam, loans from individual financiers, brought in money from the personal bank account in Indusind Bank, ICICI Bank and from 3rd Respondent

account. It is stated that the payments were made from the above personal accounts to various suppliers and contractors to the tune of Rs.2,83,61,284/-.

18. It is stated that during first week of February 2021, the first and Second Respondent health was badly affected and they could not attend the office since 09.02.2021 due to the severe health problems.

19. It is stated that the private financiers started visiting the Respondent house and threatened his aged parents. Having no other alternative but to safe guard their life and limb, the First Respondent took out the money brought into the Corporate Debtor's account to his mother's account and paid the private financiers after receiving receipts in the manner they had given. Since the private financiers deal with cash transactions, they directed the respondent to pay the loan amount in the same mode. Some of the payments were made through RTGS directly from South Indian Bank Limited. (The First Respondent has provided with the receipts / Memorandum of Understanding on stamp papers issued by the private financiers which has been filed along with the application.)

20. It is stated that the amount received in the current account held in South Indian Bank was paid to the private financiers only to protect their lives and the same was not done with an intent to cheat or defraud the creditors. (The Respondent has provided the receipts and other documents for the amount so paid to the private financiers, salary, project expenses and other expenses to the Applicant.) It is stated that towards the loan amount of Bank of India, the suspended director peacefully handed over possession of the secured assets as early as April 2022. Admitting without conceding that there is diversion of funds as alleged by the Applicant, the First Respondent as Director of the Corporate Debtor and his mother paid the personal money to the tune of Rs.2,83,61,284/-.

21. It is stated that the COC has wrongly come to the conclusion that there were siphoning of funds and thereby directing the Liquidator to file the present application without applying its mind to the documents produced by the Respondents. It is stated that the Respondents neither acted in a manner detrimental to the interest of the creditors nor became unjustly enrich by transferring the Corporate

Debtor's money. A mere perusal of the Corporate Debtor's account held in Bank of India would negate the contentions of the Applicant.

FINDINGS OF THIS TRIBUNAL

22. Heard the submissions made by the Learned Counsel for the parties and perused the records.

23. In the present case, the Liquidator has impugned the transaction to the tune of Rs.1,88,95,000/- as against the Respondents. From the averments made in the reply, it is seen that the 1st Respondents has admitted that he had taken out the money brought into the Corporate Debtor's account to his mother's account and paid the private financiers. Further, the Respondent has provided the receipts and other documents for the amount so paid to the private financiers, salary, project expenses and other expenses to the Applicant / Liquidator. This goes on to show that those private financiers paid in priority over other financial creditors, which is contrary to waterfall mechanism prescribed under Section 53 of IBC, 2016.

24. Eventhough the reason adduced by the Respondent that *“the private financiers started visiting the Respondent house and threatened his aged parents and having no other alternative but to safe guard their life and limb, the First Respondent had took the money brought into the Corporate Debtor’s account to his mother’s account and paid the private financiers”* but the same cannot be construed as a plausible reason for appropriation of the funds from the CD’s account to the 3rd Respondent account.

25. At this juncture, it is relevant to refer Section 66 of the Code which reads as under:-

“66. Fraudulent trading or wrongful trading. -

*(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that **any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.***

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if

a. before the insolvency commencement date, such director or partner knew or ought to have known that the there was no reasonable prospect

of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

b. such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor..."

26. This Bench is of the view that the present case is squarely covered u/s 66(1) of the Code with respect to conduct and liability of Respondent Nos.1, 2, 3 & 4 to repay the amounts withdrawn from the coffers of the Corporate Debt.

27. The words used in section 66(1) i.e. "...the Adjudicating Authority may on the application of the resolution professional pass an order that *any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as if may deem fit*, shows that Adjudicating Authority has the power to demand contribution to the assets of the corporate debtor, from the defrauding party.

28. The above transactions dealt with by R1 to R4 squarely indicates a fraudulent transaction under Section 66 of the Insolvency and Bankruptcy Code, 2016.

29. As per the Transaction Audit Report in para 3.4 and 3.5, the following transactions are termed to be fraudulent:-

- a. 50 Lakhs cash withdrawal
- b. 92.50 Lakhs by RTGS
- c. Rs.31.50 Lakhs for settlement of private financiers
- d. Salary and Project expenses.

30. The salary and project expenses paid prior to CIRP cannot be brought under scope of fraudulent transactions. However, for the reasons as adduced in the preceding paragraphs, the other three transactions to the tune of Rs.1,74,00,000/- (Rupees One Crore and Seventy Five Lakhs Only) dealt with by R1 to R4 squarely indicates a fraudulent transaction under Section 66 of the Insolvency and Bankruptcy Code, 2016.

31. Under such circumstances, we direct that the **Respondents 1 to 4** shall jointly make contribution **to the account of the Corporate Debtor** a sum of **Rs.1,74,00,000/- (Rupees One Crore and Seventy Four Lakhs Only)** **within a period of 30 days from the date of this Order.**

32. With the above said directions, the applications
IA(IBC)/387(CHE)/2023 stands **disposed of**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

SriramAnanth.V